A

ONG SIEW HWA v. UMW TOYOTA MOTOR SDN BHD

COURT OF APPEAL, PUTRAJAYA
LINTON ALBERT JCA
ROHANA YUSUF JCA
VERNON ONG LAM KIAT JCA
B [CIVIL APPEAL NO: A-02-1777-08-2013]
9 SEPTEMBER 2014

C ***HIRE PURCHASE:*** *Hire purchase agreement – Implied condition – Defective goods – Motorcar purchased by hirer under hire purchase transaction defective – Whether purchaser could claim against vendor – Whether purchaser could only claim against lender – Whether protection afforded by Consumer Protection Act 1999 applied to goods under hire purchase – Consumer Protection Act 1999, ss. 3, 32, 47*

D The appellant ('plaintiff') purchased a new car from UMW Toyota Motor Sdn Bhd ('respondent') for RM151,706.45 and paid RM71,706.45 towards the purchase price. The balance of the purchase price of RM80,000 was settled by Toyota Capital Malaysia Sdn Bhd ('second defendant') pursuant to a hire-purchase agreement ('HPA') entered into between the plaintiff and the second defendant. The car was defective when it was delivered to the
E plaintiff. The respondent's attempts at resolving the problems of the motorcar were unsuccessful and the problems persisted. Exasperated, the plaintiff left the motorcar at the respondent's service centre. The plaintiff thus claimed in the court below for termination of the contract of sale, the return of the purchase price, general and special damages for breach of
F implied guarantees as to acceptable quality under the Consumer Protection Act 1999 ('CPA 1999') and the Sale of Goods Act 1957 ('SGA 1957'). The respondent contended that due to the existence of the HPA between the second defendant and the plaintiff, in law, there was no contract of sale of the said car from the respondent to the plaintiff. It was also argued that from
G the moment the HPA came into effect, the respondent had faded out of the picture and ceased to be any contractual relationship between the plaintiff and the respondent. As such, the plaintiff's recourse and remedy for the alleged breaches was against the second defendant which supplied the motorcar to the plaintiff under the HPA. At the conclusion of the trial, the
H Judicial Commissioner ('JC') dismissed the plaintiff's claim against the respondent but allowed the plaintiff's claim against the second defendant. Dissatisfied, the plaintiff filed the present appeal. The issue that arose for the court's determination was whether the plaintiff's claim against the respondent under the CPA 1999 and the SGA 1957 was sustainable as the
I motorcar was supplied by the second defendant under a hire-purchase agreement.

Held (dismissing plaintiff's appeal with costs)
Per Vernon Ong Lam Kiat JCA delivering the judgment of the court:

(1) Once a hire-purchase agreement has been entered into between the customer and the finance company, the dealer drops out of the picture altogether. The only contract that subsisted was between the customer and the finance company. The contractual relationship between the customer and the dealer, such as that existed at the outset, had been superseded and no longer exists. (para 15)

(2) Regardless of whether the plaintiff's claim is founded on the CPA 1999 or the SGA 1957, the plaintiff must cross the threshold of establishing that he has a contractual relationship with the car dealer in order to found the claim. Once the plaintiff had entered into the hire-purchase agreement with the finance company, any contractual relationship between the plaintiff and the car dealer had been extinguished, the legal effect of which was that the plaintiff had no claim against the car dealer. Therefore, the plaintiff's claim against the respondent was unsustainable. There was no contractual relationship between the plaintiff and the respondent to found the basis of the claim under the CPA 1999 and/or the SGA 1957. (paras 17 & 21)

Bahasa Malaysia *Translation Of Headnotes*

Perayu ('plaintif') telah membeli sebuah kereta baru daripada UMW Toyota Motor Sdn Bhd ('responden') pada harga RM151,706.45 dan telah membayar RM71,706.45 bagi harga belian. Baki harga belian sebanyak RM80,000 telah dibayar oleh Toyota Capital Malaysia Sdn Bhd ('defendan kedua') menurut suatu perjanjian sewa beli ('HPA') yang dimasuki antara plaintif dan defendan kedua. Kereta tersebut rosak semasa dihantar kepada plaintif. Percubaan responden untuk menyelesaikan masalah kereta tersebut tidak berjaya dan masalah tersebut masih berterusan. Oleh sebab marah, plaintif telah meninggalkan kereta tersebut di pusat perkhidmatan responden. Plaintif dengan itu, telah menuntut di mahkamah di bawah untuk penamatan kontrak jualan, pulangan harga pembelian, ganti rugi am dan ganti rugi khas untuk kemungkiran jaminan tersirat mengenai kualiti boleh terima di bawah Akta Perlindungan Pengguna 1999 ('CPA 1999') dan Akta Jualan Barangan 1957 ('SGA 1957'). Responden menghujahkan bahawa oleh kerana wujud HPA antara defendan kedua dan plaintif, maka tidak ada kontrak jualan kereta daripada responden kepada plaintif dari segi undang-undang. Juga telah dihujahkan bahawa dari masa HPA berkuatkuasa, responden telah tersisih dan tiada apa-apa hubungan kontrak antara plaintif dan responden. Oleh itu, tuntutan dan remedi plaintif bagi kemungkiran tersebut adalah terhadap defendan kedua yang membekalkan kereta kepada plaintif di bawah HPA. Di akhir perbicaraan, Pesuruhjaya Kehakiman ('JC') telah menolak tuntutan plaintif terhadap responden tetapi membenarkan tuntutan plaintif terhadap defendan kedua. Tidak berpuas hati, plaintif memfailkan rayuan ini. Isu yang timbul untuk pertimbangan mahkamah adalah sama ada

A tuntutan plaintif terhadap responden di bawah CPA 1999 dan SGA 1957 boleh dipertahankan kerana kereta tersebut telah disediakan oleh defendan kedua di bawah suatu perjanjian sewa beli.

Diputuskan (menolak rayuan plaintif dengan kos)

B **Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:**

(1) Sebaik sahaja perjanjian sewa beli dimeterai antara pelanggan dan syarikat kewangan, penjual tersebut tersisih sama sekali. Satu-satunya kontrak yang wujud adalah antara pelanggan dan syarikat kewangan. Hubungan kontrak antara pelanggan dan penjual, seperti yang wujud
C sejak awal lagi, telah digantikan dan tidak lagi wujud.

(2) Tidak kira sama ada tuntutan plaintif berasaskan CPA 1999 atau SGA 1957, plaintif harus menyeberangi ambang untuk membuktikan bahawa dia mempunyai hubungan kontrak dengan penjual kereta untuk
D membuktikan tuntutan tersebut. Apabila plaintif telah memeterai perjanjian sewa beli dengan syarikat kewangan, apa-apa hubungan kontrak antara plaintif dan penjual kereta menjadi luput, kesan undang-undang adalah bahawa plaintif tidak mempunyai tuntutan terhadap penjual kereta. Oleh itu, tuntutan plaintif terhadap responden tidak
E boleh dipertahankan. Tidak terdapat hubungan kontrak antara plaintif dan responden untuk mengasaskan asas tuntutan di bawah BPA 1999 dan/atau SGA 1957.

Case(s) referred to:

Ahmad Ismail v. Malaya Motor Co & Anor [1973] 1 LNS 1 FC ***(refd)***

F *Fiman Plastics Industries Sdn Bhd v. Zaitun Industries Sdn Bhd [2003] 1 LNS 246 HC* ***(dist)***

Heng Long Motor Trading Co v. Osman Abdullah [1994] 3 CLJ 754 HC ***(refd)***

Matang Plastik & Metal Work Industries Sdn Bhd & Ors v. Daimler Chrysler Malaysia Sdn Bhd & Ors [2014] 8 CLJ 998 CA ***(dist)***

Perfect Kam Hung Sdn Bhd v. Cheah Tai Hoe & Anor [2011] 1 LNS 1580 HC ***(dist)***

G *Puncak Niaga (M) Sdn Bhd v. NZ Wheels Sdn Bhd [2011] 9 CLJ 833 CA* ***(dist)***

Legislation referred to:

Consumer Protection Act 1999, s. 47

Sale of Goods Act 1957, ss. 14, 16

For the appellant - M Mathialagan (Lizawati Salamon with him); M/s Madhi Param
H *& Co*

For the respondent - Jasmeetpal Singh; M/s Siew & Jasmeet

[Editor's note: For the High Court judgment, please see Ong Siew Hwa v. UMW Toyota Motor Sdn Bhd & Anor [2014] 4 CLJ 373.]

Reported by Sandra Gabriel

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JUDGMENT

Vernon Ong Lam Kiat JCA:

Introduction

[1] In this appeal, the plaintiff in the court below is dissatisfied with the decision of the learned Judicial Commissioner (JC) in dismissing his claim against the first defendant for termination of the contract of sale, the return of the purchase price, general and special damages for breach of implied guarantees as to acceptable quality under the Consumer Protection Act 1999 (CPA 1999) and the Sale of Goods Act 1957 (SGA 1957).

[2] On 9 September 2014, after hearing of counsel and perusing the written submissions filed and the appeal record, we dismissed the plaintiff's appeal. We now provide the grounds of our decision.

Brief Account Of The Salient Facts

[3] In 2010, the plaintiff purchased a new motorcar from UMW Toyota Motor Sdn Bhd (the first defendant) for RM151,706.45. The plaintiff paid RM71,706.45 towards the purchase price. The balance of the purchase price of RM80,000 was settled by Toyota Capital Malaysia Sdn Bhd (the second defendant) pursuant to a hire-purchase agreement ("HPA") entered into between the plaintiff and the second defendant.

[4] The fact that the new motorcar was defective when it was delivered to the plaintiff is not really in issue. The plaintiff made numerous complaints to the first defendant, the first of which was made on 22 March 2010 when the plaintiff took delivery of the motorcar. The first defendant's attempts at resolving the mechanical problems of the motorcar were unsuccessful and the problems persisted. On 8 December 2010, the exasperated plaintiff left the motorcar at the first defendant's Ipoh Service Centre.

[5] At the conclusion of the trial, the learned JC dismissed the plaintiff's claim against the first defendant. The plaintiff's claim against the second defendant was allowed.

Submission Of Parties

Plaintiff's Submission

[6] Learned counsel for the plaintiff argued that there is a consumer and supplier relationship between the plaintiff and the first defendant under the CPA 1999. As a consumer, the plaintiff has a reasonable expectation that the motorcar would be of acceptable quality fit for its purpose and devoid of defects.

[7] Learned counsel also argued that the learned JC made a correct finding that the plaintiff is a consumer under the CPA 1999. However, the learned JC erred in holding that the second defendant is the supplier. The learned JC ought to have found that the first defendant was a supplier under the CPA

1999 (*Puncak Niaga (M) Sdn Bhd v. NZ Wheels Sdn Bhd* [2011] 9 CLJ 833; *Matang Plastik & Metal Work Industries Sdn Bhd & Ors v. Daimler Chrysler Malaysia Sdn Bhd & Ors* [2014] 8 CLJ 998; [2014] 6 MLJ 244; *Heng Long Motor Trading Co v. Osman Abdullah* [1994] 3 CLJ 754; [1994] 2 MLJ 456).

[8] Learned counsel for the plaintiff also argued that there was a sale transaction between the plaintiff and the first defendant when the plaintiff purchased the motorcar from the first defendant. As such, the contract of sale of the motorcar is governed by the SGA 1957 so that the implied warranty as to quiet possession of the motorcar and implied conditions as to quality or fitness would apply (ss. 14 & 16 of the SGA 1957; *Perfect Kam Hung Sdn Bhd v. Cheah Tai Hoe & Anor* [2011] 1 LNS 1580; [2011] 9 MLJ 593; *Fiman Plastics Industries Sdn Bhd v. Zaitun Industries Sdn Bhd* [2003] 1 LNS 246; [2003] 4 MLJ 258).

First Defendant's Submission

[9] Learned counsel for the first defendant argued that with the existence of the HPA between the second defendant and the plaintiff, there was no contract of sale and no privity of contract between the plaintiff and the first defendant.

[10] Once the HPA came into effect, there ceased to be any contractual relationship between the plaintiff and the first defendant (*Ahmad Ismail v. Malaya Motor Co & Anor* [1973] 1 LNS 1; [1973] 2 MLJ 66 FC). As there was no contract of sale in law between the plaintiff and the first defendant, the plaintiff could not found a claim for termination of a contract of sale against the first defendant. The fact that the plaintiff had paid the initial deposit of RM5,000 and a part payment of RM66,706.45 to the first defendant did not mean that in law he purchased the motorcar from the first defendant. The learned JC was correct in disregarding the SGA 1957 as against the first defendant.

[11] Learned counsel for the first defendant also argued that the second defendant was the supplier of the motorcar within the meaning of the CPA 1999. The CPA 1999 preserves and recognises the concept of hire purchase (s. 47 of the CPA 1999). As such, the plaintiff's recourse and remedy for the alleged breaches are against the second defendant which supplied the motorcar to the plaintiff under the HPA.

Decision

[12] This appeal centres on one issue. It is this: whether the plaintiff's claim against the first defendant under the CPA 1999 and the SGA 1957 is sustainable as the motorcar was supplied by the second defendant under a hire-purchase agreement.

[13] In *Ahmad Ismail v. Malaya Motor Co & Anor* (*supra*), the appellant agreed to buy a second hand motorcar from the first respondent (the car dealer) for RM4,900. The appellant traded-in his own car for which he was given a credit of RM1,200 and paid a deposit of RM1,000. The appellant entered

into a hire-purchase agreement with the second respondent (the finance company) in respect of the balance purchase price. Under the hire-purchase agreement, the finance company was referred to as the "owners" of the motorcar and the appellant as the "hirer". Subsequently, the motorcar was detained by the police on suspicion that it had been stolen. The appellant sued both the car dealer and the finance company for breach of contract. The appellant's claim was dismissed in the Sessions Court and his appeal to the High Court was also dismissed. The question before the Federal Court was framed as follows: After the execution of the hire-purchase agreement between the appellant and the finance company did there remain any contractual relationship between the appellant and the car dealer so that the appellant has a claim against him? The Federal Court held that the documents evidencing the sale of the motorcar by the car dealer to the appellant were superseded by the hire-purchase agreement; and that from the language of the hire-purchase agreement it is plain that the car dealer completely faded out of the picture and the only contract that remained then was between the appellant and the finance company. As such, the appellant has no claim against the first respondent car dealer.

[14] In *Heng Long Motor Trading Co v. Osman Abdullah* (*supra*), the customer bought a van from the dealer for RM13,500. He paid a deposit of RM5,500 and the balance of RM8,000 was financed by Affin Credit (M) Sdn Bhd, a finance company under a hire-purchase agreement. Upon full settlement of the payments under the hire-purchase agreement, the registration card of the van was returned to the customer. Subsequently, the van was seized by the Royal Customs and Excise Department on the ground that it was material evidence in a customs case under investigation regarding its import. The customer and the finance company sued the dealer for breach of the implied condition of the dealer's right to sell and give possession and sole and exclusive use and benefit of the van. The trial Magistrate held, *inter alia*, that there was a sale and purchase agreement, though not in writing, between the customer and the dealer, which had not been cancelled out by the hire-purchase agreement and that there had been a breach of the implied warranty of quiet possession of the van. The trial Magistrate then awarded RM10,811.10 to the customer against the dealer with costs. The dealer's appeal to the High Court was dismissed. The learned judge held that there had been a sale of the van by the dealer to the customer. The learned judge found that this was not a case where the finance company bought the van by paying the dealer the purchase in full and then let it on hire-purchase to the customer. Instead, it was a case where the customer having paid the deposit, was unable to settle the balance on his own and had to seek a loan from the finance company for the purchase. The learned judge held that *Ahmad Ismail*'s case is not applicable on two main grounds. First, the Federal Court's decision did not hold that there was no sale between the car dealer and the plaintiff in that case. The Federal Court held that there was such a sale but it was ultimately superseded by the

hire-purchase agreement between the plaintiff and the finance company and accordingly ruled that the plaintiff's claim against the car dealer failed. Secondly, the plaintiff relied on the SGA 1957 whereas in the instant case, the plaintiff relied on the Sale of Goods Act 1893 [UK] though the Act was not specifically pleaded as such.

[15] With respect, we do not agree with the decision of the learned judge in *Heng Long Motor*'s case. Whilst the facts in *Ahmad Ismail*'s case may be slightly different, the essential factual matrix is the same. In both cases, the customer paid a deposit and part payment towards the purchase price of the motor vehicle. In both cases, the customer entered into a hire-purchase agreement with a finance company to finance the purchase. What is important to discern from *Ahmad Ismail*'s case is the legal principle that once a hire-purchase agreement has been entered into between the customer and the finance company, the dealer drops out of the picture altogether. The only contract that subsisted was between the customer and the finance company. The contractual relationship between the customer and the dealer, such as existed at the outset, has been superseded and no longer exists; in other words, the contractual relationship between the customer and the dealer no longer exists.

[16] We do not think that the fact that the plaintiff in *Ahmad Ismail*'s case relied on the SGA 1957 whereas the customer in *Heng Long Motor*'s case relied on the Sale of Goods Act 1893 [UK] is a distinguishing factor. In our view, the question goes to capacity; whether the plaintiff has the contractual right to sue the car dealer in the first place.

[17] Regardless of whether the plaintiff's claim is founded on the CPA 1999 or the SGA 1957, the plaintiff must cross the threshold of establishing that he has a contractual relationship with the car dealer in order to found the claim. The *ratio decidendi* of the Federal Court in *Ahmad Ismail*'s case is quite clear. Once the plaintiff has entered into the hire-purchase agreement with the finance company, any contractual relationship between the plaintiff and the car dealer has been extinguished; the legal effect of which is that the plaintiff has no claim against the car dealer.

[18] In *Puncak Niaga (M) Sdn Bhd v. NZ Wheels Sdn Bhd* (*supra*), the customer purchased a new motorcar from a car dealer. The customer sued the car dealer for breach of implied conditions and guarantees under the CPA 1999. In *Matang Plastik & Metal Work Industries Sdn Bhd & Ors v. Daimler Chrysler Malaysia Sdn Bhd & Ors* (*supra*), the customer purchased a new car and sued the car dealer and authorised importer and distributor for breach of implied guarantee as to acceptable quality under the CPA 1999. In both cited cases, the motorcars were purchased directly from the dealer; there was no hire-purchase agreements involved. As such, the cases are distinguishable on the facts and of no aid to the appellant's arguments.

[19] Similarly, the facts in *Fiman Plastics Industries Sdn Bhd v. Zaitun Industries Sdn Bhd* (*supra*) are also distinguishable as the claim was related to the issue of merchantable quality and fitness for purpose of plastic bottles.

[20] In *Perfect Kam Hung Sdn Bhd v. Cheah Tai Hoe & Anor* (*supra*), the purchase of a tipper lorry was subject to a financing arrangement, but the finance company terminated the hire-purchase agreement at the seller's request. The tipper lorry was returned to the seller by the buyer. The High Court found that the lorry was not safe and roadworthy and fit for the purpose intended. The seller was ordered to refund the deposit and part payment paid by the buyer to the seller and pay the repair costs. The case is also distinguishable on the facts as the hire-purchase agreement was apparently terminated and the contractual relationship between the buyer and seller was resurrected thereafter so as to found an action by the buyer against the seller. We also note that *Ahmad Ismail*'s case was not considered in that case and that the learned judge may have decided otherwise if it had been considered.

[21] For the foregoing reasons, the plaintiff's claim against the first defendant is unsustainable. There is no contractual relationship between the plaintiff and the first defendant to found the basis of the claim under the CPA 1999 and or the SGA 1957. Accordingly, the appeal was dismissed with costs.